

SENATE BILL NO. 485

INTRODUCED BY J. ELLINGSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING AN INSURER AND A HEALTH CARE PROVIDER FROM INFORMING A PARENT OR OTHER CLOSE FAMILY MEMBER PROVIDING PAYMENT FOR A HEALTH CARE SERVICE FOR AN ADULT CHILD OR OTHER CLOSE ADULT FAMILY MEMBER OF THE FACT THAT A HEALTH CARE SERVICE HAS BEEN PROVIDED TO THAT ADULT CHILD OR OTHER CLOSE ADULT FAMILY MEMBER; PROVIDING AN EXCEPTION; AND AMENDING SECTIONS 33-19-306, 50-16-525, 50-16-529, AND 50-19-402, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-19-306, MCA, is amended to read:

"33-19-306. Disclosure limitations and conditions. (1) Except as provided in this section, an insurance institution, insurance producer, or insurance-support organization may not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual but:

(a) if the authorization is submitted by another insurance institution, insurance producer, or insurance-support organization, the authorization must meet the requirements of 33-19-204; or

(b) if the authorization is submitted by a person other than an insurance institution, insurance producer, or insurance-support organization, the authorization must be:

(i) dated;

(ii) signed by the individual;

(iii) sufficient to identify the nature of the information to be disclosed and the person to whom the information is to be disclosed; and

(iv) obtained 1 year or less prior to the date a disclosure is sought pursuant to this subsection (2)(b).

(3) Disclosure may be made to a person other than an insurance institution, insurance producer, or insurance-support organization, ~~provided that~~ if the disclosure is limited to that which is reasonably

1 necessary:

2 (a) to enable the person to perform an insurance function for the disclosing insurance institution,
3 insurance producer, or insurance-support organization and the person agrees not to further disclose the
4 information without the individual's separate, written authorization; or

5 (b) to enable the person that has agreed not to further disclose the information without the
6 individual's separate, written authorization to provide information to the disclosing insurance institution,
7 insurance producer, or insurance-support organization for the purpose of:

8 (i) determining an individual's eligibility for an insurance benefit or payment; or

9 (ii) detecting or preventing criminal activity, fraud, material misrepresentation, or material
10 nondisclosure in connection with an insurance transaction.

11 (4) Disclosure may be made to an insurance institution, insurance producer, insurance-support
12 organization, or self-insurer that has agreed not to further disclose the information without the individual's
13 separate, written authorization if the information disclosed is limited to that which is reasonably necessary:

14 (a) to detect or prevent criminal activity, fraud, material misrepresentation, or material
15 nondisclosure in connection with insurance transactions; or

16 (b) for either the disclosing or receiving insurance institution, insurance producer, or
17 insurance-support organization to perform its insurance function in connection with an insurance
18 transaction involving the individual.

19 (5) Disclosure may be made to a medical care institution or medical professional of that
20 information reasonably necessary for the following purposes:

21 (a) verifying insurance coverage or benefits;

22 (b) informing an individual of a medical problem of which the individual may not be aware; or

23 (c) conducting an operations or services audit.

24 (6) Disclosure may be made to an insurance regulatory authority that agrees not to further disclose
25 the information without the individual's separate, written authorization.

26 (7) Disclosure may be made to a law enforcement or other government authority:

27 (a) to protect the interests of the insurance institution, insurance producer, or insurance-support
28 organization in preventing or prosecuting the perpetration of fraud upon it; or

29 (b) if the insurance institution, insurance producer, or insurance-support organization reasonably
30 believes that illegal activities have been conducted by the individual.

(8) Disclosure that is limited to that which is reasonably necessary may be made as otherwise permitted or required by law.

(9) Disclosure that is limited to that which is reasonably necessary may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) (a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary may be made for the purpose of conducting actuarial or research studies, ~~provided~~ that if:

(i) no individual is identified in any actuarial or research report;

(ii) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(iii) the actuarial or research organization agrees not to further disclose the information without the individual's separate, written authorization.

(b) Disclosure of information may be made for:

(i) health research that is subject to the approval of an institutional review board and the requirements of federal law and regulations governing biomedical research; or

(ii) epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect the identity of the patient through coding or encryption.

(11) Disclosure may be made to a party or a representative of a party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the insurance institution, insurance producer, or insurance-support organization, if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation, only information is disclosed that is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to further disclose the information without the individual's separate, written authorization.

(12) (a) Disclosure that is limited to that which is reasonably necessary may be made to any affiliate whose only use of the information will be in connection with an audit of the insurance institution or insurance producer if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

(b) Disclosure of personal information that is limited to an individual's name, age, sex, family

composition, address, telephone number, occupation, and avocations may be made to any affiliate whose only use of the information is in connection with the marketing of insurance or financial products if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

(13) Except for medical record information, disclosure may be made by a consumer reporting agency to a person other than an insurance institution or insurance producer.

(14) Disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or insurance producer's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization.

(15) Disclosure that is limited to that which is reasonably necessary may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.

(16) Disclosure that is limited to that which is reasonably necessary may be made to a governmental authority as required by federal or state law or for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(17) Disclosure that is limited to that which is reasonably necessary may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction, except that notice of payment for a health care service furnished, or other explanation that a health care benefit was provided, to an adult child or other close adult family member may not be given to the child's parent or other close family member providing payment for that service.

(18) The commissioner may, after notice and hearing, adopt rules to carry out the provisions of this section. The rules may not define the recordkeeping requirements regarding authorized disclosures of personal or privileged information pursuant to subsections (2) through (17) but may define the requirements of any agreement obtained by an insurance institution, insurance producer, or insurance-support organization regarding disclosures of personal or privileged information."

Section 2. Section 50-16-525, MCA, is amended to read:

"50-16-525. Disclosure by health care provider. (1) Except as authorized in 50-16-529,

50-16-530, and 50-19-402 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1)(a) or ~~(2)~~ (1)(b). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and, to the extent practicable, a description of the information disclosed."

Section 3. Section 50-16-529, MCA, is amended to read:

"50-16-529. Disclosure without patient's authorization based on need to know. (1) A Except as provided in subsection (2), a health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

~~(1)~~(a) to a person who is providing health care to the patient;

~~(2)~~(b) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; or to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:

~~(a)~~(i) not use or disclose the health care information for any other purpose; and

~~(b)~~(ii) take appropriate steps to protect the health care information;

~~(3)~~(c) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

~~(4)~~(d) to immediate family members of the patient or any other individual with whom the patient

1 is known to have a close personal relationship, if made in accordance with the laws of the state and good
2 medical or other professional practice, unless the patient has instructed the health care provider not to
3 make the disclosure;

4 ~~(5)(e)~~ to a health care provider who is the successor in interest to the health care provider
5 maintaining the health care information;

6 ~~(6)(f)~~ for use in a research project that an institutional review board has determined:

7 ~~(a)(i)~~ is of sufficient importance to outweigh the intrusion into the privacy of the patient that would
8 result from the disclosure;

9 ~~(b)(ii)~~ is impracticable without the use or disclosure of the health care information in individually
10 identifiable form;

11 ~~(c)(iii)~~ contains reasonable safeguards to protect the information from improper disclosure;

12 ~~(d)(iv)~~ contains reasonable safeguards to protect against directly or indirectly identifying any
13 patient in any report of the research project; and

14 ~~(e)(v)~~ contains procedures to remove or destroy at the earliest opportunity, consistent with the
15 purposes of the project, information that would enable the patient to be identified, unless an institutional
16 review board authorizes retention of identifying information for purposes of another research project;

17 ~~(7)(g)~~ to a person who obtains information for purposes of an audit, if that person agrees in writing
18 to:

19 ~~(a)(i)~~ remove or destroy, at the earliest opportunity consistent with the purpose of the audit,
20 information that would enable the patient to be identified; and

21 ~~(b)(ii)~~ not disclose the information further, except to accomplish the audit or to report unlawful
22 or improper conduct involving fraud in payment for health care by a health care provider or patient or other
23 unlawful conduct by a health care provider;

24 ~~(8)(h)~~ to an official of a penal or other custodial institution in which the patient is detained; and

25 ~~(9)(i)~~ to any contact, as defined in 50-16-1003, if the health care provider reasonably believes that
26 disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other
27 individual.

28 (2) A health care provider may not, at the request of an adult patient whose health care coverage
29 is provided by a parent or other close family member, inform a third-party payor of the name of the adult
30 patient, that a health care service was provided to that patient, of the type of health care service provided,

1 or of the circumstance under which that service was provided unless the health care provider is directed,
2 at the specific instruction of the third-party payor applicable only to the individual health care service
3 provided to that particular patient, to disclose the name, the fact that a health care service was provided,
4 and the type of service provided in order to be paid for that service by the third-party payor."

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6 **Section 4.** Section 50-19-402, MCA, is amended to read:

7 **"50-19-402. Statement of policy -- access to information.** (1) The prevention of fetal, infant, and
8 child deaths is both the policy of the state of Montana and a community responsibility. Many community
9 professionals have expertise that can be used to promote the health, safety, and welfare of fetuses,
10 infants, and children. The use of these professionals in reviewing fetal, infant, and child deaths can lead
11 to a greater understanding of the causes of death and the methods of preventing deaths. It is the intent
12 of the legislature to encourage local communities to establish voluntary multidisciplinary fetal, infant, and
13 child mortality review teams to study the incidence and causes of fetal, infant, and child deaths.

14 (2) A health care provider may disclose information about a patient without the patient's
15 authorization or without the authorization of the representative of a patient who is deceased upon request
16 of a local fetal, infant, and child mortality review team. The review team may request and may receive
17 information from a county attorney, as provided in 44-5-303(4), and from a health care provider, as
18 provided in 50-16-525, after the review team has considered whether the disclosure of the information
19 by the provider satisfies the criteria provided in ~~50-16-529(6)~~ 50-16-529(1)(f). The review team shall
20 maintain the confidentiality of the information received.

21 (3) The local fetal, infant, and child mortality review team may only:

22 (a) compile statistics of fetal, infant, and child mortality;

23 (b) analyze the preventable causes of fetal, infant, and child deaths, including child abuse and
24 neglect; and

25 (c) recommend measures to prevent future fetal, infant, and child deaths."

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27 **NEW SECTION. Section 5. Saving clause.** [This act] does not affect rights and duties that
28 matured, penalties that were incurred, or proceedings that were begun before October 1, 2001.

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